

Questions and Answers on: TENANT SECURITY DEPOSITS

Each year, hundreds of thousands of North Carolinians rent houses, apartments, mobile homes, and other dwellings as their residences. For the “first-time tenant”—and some “veteran” renters—this can be a confusing and somewhat unsettling experience. As a tenant or future tenant, the more you know about the process of renting residential real estate, the better you will be able to look out after your interests and carry out your responsibilities under your rental agreement. This booklet addresses an important aspect of the rental process which generates many questions from tenants—tenant security deposits.



The North Carolina Tenant Security Deposit Act (the “Act”) sets out the rights and responsibilities of residential tenants, landlords and their agents regarding tenant security deposits. (See NC General Statutes Sections 42-50 through 42-56.) The Act applies to all persons and firms which rent residential properties (except single rooms) whether on a weekly, monthly, or annual basis. The Act does not require landlords

(or their agents) to collect security deposits, but landlords usually do collect security deposits in order to assure that they will be reimbursed for certain specified losses caused by tenants. Landlords also frequently use the services of real estate agents to help them manage and rent their properties. These agents must be licensed by the North Carolina Real Estate Commission and, like the landlord, must comply with the Tenant Security Deposit Act as well as the N.C. Real Estate License Law and various rules adopted by the Real Estate Commission when renting the owners’ properties.



How much security deposit can I be charged? Can my landlord charge me a “pet fee”? What happens to my security deposit while I’m a tenant? And what happens to it once my rental term is over? These are some of the questions that this booklet attempts to answer. Although this information focuses on security deposits from your perspective as a tenant, it should also be useful to landlords, property managers and rental agents.

Read this booklet carefully! Then, if you still have questions about tenant security deposits, you are encouraged to contact your private attorney or call the N.C. Real Estate Commission’s Regulatory Affairs Division (919/875-3700).

Q & A

Q: How much security deposit can a landlord charge?

A: If your agreement with the landlord is to rent his property on a week-to-week basis, your deposit may not exceed the equivalent of two weeks’ rent. If you’re renting on a month-to-month basis, your deposit cannot be more than 1 1/2 months’ rent. And, if your rental period is greater than month-to-month, your deposit cannot be more than two months’ rent.

Q: Can my landlord charge me a “pet fee”?

A: Yes. In addition to the security deposit, your landlord may also charge you a non-refundable fee if you plan to keep a pet in his property or on the grounds. The “pet fee” can be any “reasonable” amount that the landlord wishes to charge. If your pet damages the property, the landlord may keep all or a portion of the security deposit as necessary to repair the damage in addition to keeping the pet fee.

Q: What happens to my security deposit while I’m a tenant?

A: To assure that your security deposit is safe during the period of your tenancy, State law requires the landlord or property manager to keep it in a “trust account.” A trust account is simply a bank account designated as “trust” or “escrow” that does not contain any of the landlord’s or broker’s personal funds. The trust account must be maintained in a licensed and insured North Carolina bank or savings and loan institution. Within 30 days following the beginning of your lease term, the landlord or his agent must notify you in writing where your security deposit has been placed (typically, this notification is given in the lease), and if your security deposit is moved to a different

bank or savings and loan, you must be notified in writing of the new location.



Q: Are there any exceptions to the requirement that my security deposit be placed in a trust account?

A: Yes, there is one exception. If the owner is managing his own property (or the property is being managed by an agent who has agreed for the owner to hold the deposits), the owner may post a bond to cover the security deposits. In such case, the landlord must (1) notify you and the other tenants of the name of the insurance company providing the bond; (2) purchase the bond from an insurance company licensed to do business in North Carolina; (3) name you and the other tenants as payees under the bond; and (4) assure that the amount of the bond is sufficient to cover all security deposits collected. *[Note: It is difficult for landlords with multiple rental units to maintain the required minimum bond amount because, with tenants constantly moving in and out, the minimum security deposit balance changes from day to day. Consequently, most landlords choose to place security deposits in a trust account rather than purchase a bond.]*

Q: Can my security deposit be placed in an interest-bearing account?

A: Yes, under certain conditions. If a real estate agent is managing property for the owner, he may

place your deposit in an interest-bearing account *if he has your written permission and the written permission of the owner.* If your lease authorizes the agent to place your security deposit in an interest-bearing account, the authorization in the lease must be stated in a clear and conspicuous manner. The interest may be paid to you, to the landlord, or to the agent, depending upon your agreement with the landlord.

Q: What will happen to my security deposit at the end of my lease term?

A: If you stay for the entire lease term and you have paid all rent due, the landlord (or agent) may deduct from your security deposit only the actual cost of repairing any damage which you have done to his property. *He cannot charge you for damage caused by “ordinary wear and tear.”* What constitutes “ordinary wear and tear” must be determined on a case-by-case basis. For example, if you are the most recent tenant in the property, the landlord cannot charge you to replace such items as carpet, plumbing and appliances which need replacement because they are old and worn out. In fact, you cannot be charged for even contributing to the normal wear and tear of such items. On the other hand, if you caused the item to wear out because of your mistreatment of it, you may be charged for the amount of *unusual* wear which you caused (but not the entire cost of replacement). Ordinarily, costs for routine cleaning and maintenance (painting, carpet cleaning, etc.) may not be deducted from your security deposit. However, if you leave the property so filthy that unusual or extraordinary measures are necessary to clean or restore the premises, the landlord may deduct the cost of such cleaning from your security deposit. *Continued*